

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 2
94TH GENERAL ASSEMBLY

Reported from the Committee on Health and Mental Health, February 22, 2007, with recommendation that the Senate Committee Substitute do pass.

TERRY L. SPIELER, Secretary.

0509S.03C

AN ACT

To amend chapter 570, RSMo, by adding thereto one new section relating to obtaining, receiving and selling personal health information, with penalty provisions and an effective date.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 570, RSMo, is amended by adding thereto one new section, to be known as section 570.350, to read as follows:

570.350. 1. A person commits the crime of knowingly obtaining, receiving, or selling personal health information without consent if such person:

(1) Procures, attempts to procure, solicits, or conspires with another to procure the personal health information of any resident of this state knowing that such information has been obtained without the consent of the person to whom the personal health information pertains; or

(2) By fraudulent, deceptive, or false means:

(a) Sells, or attempts to sell, personal health information of any resident of this state knowing that such information has been obtained without the consent of the person to whom the information pertains; or

(b) Receives personal health information of any resident of this state knowing that such information has been obtained without the consent of the person to whom the information pertains or by fraudulent, deceptive, or false means.

2. The crime of knowingly obtaining, receiving, or selling personal health information without consent is a class D felony if such crime is committed against at least one but not more than five persons. Such crime shall be a class C felony if committed against more

21 **than five persons.**

22 **3. No provision of this section shall be construed so as to prevent**
23 **any action by a law enforcement or any governmental agency, or any**
24 **officer, employee, or agent of such agency, including the Missouri**
25 **attorney general or any of his or her agents and any county or**
26 **municipal prosecutor and his or her agents, to obtain, use, or disclose**
27 **personal health information in connection with the performance of the**
28 **official duties of the agency, as allowed by state or federal privacy**
29 **laws.**

30 **4. No provision of this section shall be construed to prohibit a**
31 **health care provider from obtaining, using, disclosing, or permitting**
32 **access to any personal health information, either directly or indirectly**
33 **through its agents:**

34 **(1) As otherwise authorized or required by state or federal law;**
35 **or**

36 **(2) As directed by said person or his or her legal representative.**

37 **5. No provision of this section shall be construed to prevent an**
38 **insurance company or insurance producer, as defined in section**
39 **375.012, RSMo, a workers' compensation carrier that is authorized to**
40 **insure workers' compensation liabilities under section 287.280, RSMo,**
41 **an employer or group or trust that has been granted self-insurance**
42 **authority by the division of workers' compensation under section**
43 **287.280, RSMo, and 8 CSR 50.3.010 or chapter 537, RSMo, a third-party**
44 **administrator, or an employer administering an employee or retiree**
45 **benefit plan that is investigating a workers' compensation injury or**
46 **administering workers' compensation benefits, or a person employed**
47 **by or contracting with any of the preceding entities who is acting in his**
48 **or her capacity as an employee or contractor of that entity from**
49 **obtaining, using, disclosing, or permitting access to any personal health**
50 **information or personal health information record, either directly or**
51 **indirectly through its agents in connection with any business purpose**
52 **described in subsection 8 of this section or as permitted by state laws**
53 **and regulations governing the conduct of such entities with respect to**
54 **personal information, including personal health information. Any such**
55 **entity shall be deemed to comply with this section to the extent such**
56 **federal or state laws and regulations apply to such entity and such**
57 **entity is in compliance or acting in furtherance of its compliance with**

58 such federal or state laws and regulations.

59 6. No provision of this section shall be construed so as to limit
60 conducting any medical research as defined in 45 CFR Part 46.

61 7. No provision of this section shall be construed to prohibit
62 reporting personal health information where authorized or required by
63 law.

64 8. The exceptions for using, disclosing, or permitting access to
65 any personal health information or personal health information record,
66 either directly or indirectly in connection with any business purpose
67 under subsection 5 of this section as prescribed by federal law in 15
68 U.S.C. 6802(e), include the following:

69 (1) As is necessary to effect, administer, or enforce a transaction
70 requested or authorized by the business consumer, or in connection
71 with servicing or processing a financial product or service requested
72 or authorized by the consumer, maintaining or servicing the consumer's
73 account with the financial institution, or with another entity as part of
74 a private label credit card program or other extension of credit on
75 behalf of such entity or a proposed or actual securitization, secondary
76 market sale, including sales or servicing rights, or similar transaction
77 related to a transaction of the consumer;

78 (2) With the consent or at the direction of the consumer;

79 (3) To protect the confidentiality or security of the financial
80 institution's records pertaining to the consumer, the service or product,
81 or the transaction or to protect against or prevent actual or potential
82 fraud, unauthorized transactions, claims, or other liability. Such
83 protections shall also be for required institutional risk control, or for
84 resolving customer disputes or inquiries and to persons holding a legal
85 or beneficial interest relating to the consumer or to persons acting in
86 a fiduciary or representative capacity;

87 (4) To provide information to insurance rate advisory
88 organizations, guaranty funds or agencies, applicable rating agencies
89 of the financial institution, persons assessing the institution's
90 compliance with industry standards, and the institution's attorneys,
91 accountants, and auditors;

92 (5) To the extent specifically permitted or required under other
93 provisions of law and in accordance with the Right to Financial Privacy
94 Act of 1978, to law enforcement agencies, including a federal functional

95 regulator, the Secretary of the Treasury with respect to subchapter II
96 of chapter 53 of title 31, and chapter 2 of title I of Public Law 91-508, a
97 state insurance authority, or the Federal Trade Commission, self-
98 regulatory organizations, or for an investigation on a matter related to
99 public safety;

100 (6) To provide information to a consumer reporting agency in
101 accordance with the Fair Credit Reporting Act, 15 U.S.C. 1681 et seq.,
102 or from a consumer report reported by a consumer reporting agency;

103 (7) In connection with a proposed or actual sale, merger,
104 transfer, or exchange of all or a portion of a business or operating unit
105 if the disclosure of nonpublic personal information concerns solely
106 consumers of such business or unit; or

107 (8) To comply with federal, state, or local laws, rules, and other
108 applicable legal requirements or to comply with a properly authorized
109 civil, criminal, or regulatory investigation or subpoena or summons by
110 federal, state, or local authorities, or to respond to judicial process or
111 government regulatory authorities having jurisdiction over the
112 financial institution for examination, compliance, or other purposes
113 authorized by law.

114 9. As used in this section, the following terms shall mean:

115 (1) "Personal health information", any identifiable information,
116 in electronic or physical form, regarding the individual's health,
117 medical history, medical treatment, or diagnosis by a health care
118 provider that is:

119 (a) Created or stored by the healthcare provider or health
120 carrier in the normal course of its business operations; and

121 (b) Not otherwise available publicly or in the public domain;

122 (2) "Health care provider", any physician, hospital, health
123 maintenance organization, ambulatory surgical center, long-term care
124 facility, including those licensed under chapter 198, RSMo, dentist,
125 registered or licensed practical nurse, optometrist, podiatrist,
126 pharmacist, chiropractor, professional physical therapist, psychologist,
127 physician in training, or any other person or entity that provides
128 health care services under the authority of a license or certificate.

Section B. Section A of this act shall become effective on January 1, 2008.

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